



**Billing Code: 4910-81-P**

**DEPARTMENT OF TRANSPORTATION**

**Maritime Administration**

**46 CFR Part 356**

**RIN 2133-AB86**

**Requirements to Document U.S.-Flag Fishing Industry Vessels of 100 Feet or Greater in Registered Length**

**AGENCY:** Maritime Administration, Department of Transportation

**ACTION:** Final rule.

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**SUMMARY:** The Maritime Administration (“MARAD”) is amending its regulations which implement new requirements regarding certain large fishing industry vessels set forth in the American Fisheries Act of 1998 (“AFA”), as amended by the Coast Guard Authorization Act of 2010 (“CGAA”) and the Coast Guard and Maritime Transportation Act of 2012 (“CGMTA”). The revisions to the regulation adds two new exceptions to the restrictions on the eligibility of vessels over 165 feet in registered length to be documented with fishery endorsements, eliminates the 15-day application deadline for vessels whose fishery endorsements have become invalid, limits fishery endorsement eligibility for certain large fishing industry vessels, and eliminates certain exemptions for specific vessels that were deleted in the CGMTA. In addition, MARAD is revising its Large Vessel Certification form to incorporate these new requirements.

**DATES:** This final rule becomes effective on [insert date 30 days after publication in the Federal Register].

**FOR FURTHER INFORMATION CONTACT:** Michael C. Pucci, Attorney Advisor,  
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**SUPPLEMENTARY INFORMATION:**

**Background**

Section 602(a) of the CGAA added two new exceptions to the restrictions on the  
eligibility of vessels over 165 feet in registered length to be documented with fishery  
endorsements found at 46 U.S.C. 12113(d): (1) replaced or rebuilt vessels and (2) fish tender  
vessels. The CGAA also eliminated the 15-day application deadline for vessels whose fishery  
endorsements had become invalid. Exemptions from the large fishing industry vessel restrictions  
are found in our regulations at 46 CFR 356.47.

In addition, section 601(b)(2) of the CGAA repealed section 203(g) of the AFA, which  
exempted particular vessels from the ownership requirements of 46 U.S.C. 12113. These exempt  
vessels are currently listed in our regulations at 46 CFR 356.51.

Section 307 of the CGMTA (“Section 307”) added further restrictions on large vessels  
under 46 U.S.C. 12113(d) by limiting those vessels from participating in the non-AFA trawl  
catcher processor subsector.

Accordingly, MARAD is updating its regulations under 46 CFR part 356 to reflect these  
amendments to the AFA and 46 U.S.C. 12113.

In addition to updating our regulations under 46 CFR part 356, MARAD is revising its Large Vessel Certificate to reflect the amendments to 46 U.S.C. 12113. Owners of fishing industry vessels 165 feet or greater in registered length are required to submit a Large Vessel Certificate to MARAD on an annual basis under 46 CFR 356.47(e). The revisions to the form include provisions for the replacement and fish tender vessels as well as a provision that an AFA sector vessel is neither participating in nor eligible to participate in the non-AFA trawl catcher-processor sector.

Finally, MARAD is amending 46 CFR 356.47(a) to update the statutory citation to the current code sections.

### **Rulemaking Analysis and Notices**

*Executive Orders 12866 (Regulatory Planning and Review), 13563 (Improving Regulation and Regulatory Review) and DOT Regulatory Policies and Procedures.* Under E.O. 12866 (58 FR 51735, October 4, 1993), supplemented by E.O. 13563 (76 FR 3821, January 18, 2011) and DOT policies and procedures, MARAD must determine whether a regulatory action is “significant,” and, therefore, subject to OMB review and the requirements of the E.O. The Order defines “significant regulatory action” as one likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal government or communities. (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency. (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the

rights and obligations of recipients thereof. (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O.

MARAD has determined that this final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, it was not reviewed by the Office of Management and Budget. This rulemaking will not result in an annual effect on the economy of \$100 million or more. It is also not considered a major rule for purposes of Congressional review under Pub. L. 104-121. This rulemaking is also not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034, February 26, 1979). The costs and overall economic impact of this rulemaking do not require further analysis.

*Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs)*

This rule is not an EO 13771 regulatory action because this rule is not significant under EO 12866.

*Executive Order 13132 (Federalism)*

We analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism") and have determined that it does not have sufficient Federalism implications to warrant the preparation of a Federalism summary impact statement. This rulemaking has no substantial effect on the States, on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials. Nothing in this document preempts any State law or regulation. Therefore, MARAD did not consult with State and local officials because it was not necessary.

*Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments)*

MARAD does not believe that this rulemaking will significantly or uniquely affect the communities of Indian tribal governments when analyzed under the principles and criteria contained in Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments). Therefore, the funding and consultation requirements of this Executive Order do not apply.

#### *Executive Order 12372 (Intergovernmental Review)*

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this rulemaking.

#### *Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 requires MARAD to assess whether this rulemaking would have a significant economic impact on a substantial number of small entities and to minimize any adverse impact. MARAD certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities.

#### *Environmental Assessment*

We have analyzed this rulemaking for purposes of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and have concluded that under the categorical exclusions provision in section 4.05 of Maritime Administrative Order (MAO) 600-1, "Procedures for Considering Environmental Impacts," 50 FR 11606 (March 22, 1985), neither the preparation of an Environmental Assessment, an Environmental Impact Statement, nor a Finding of No Significant Impact for this rulemaking is required. This rulemaking has no environmental impact.

*Executive Order 13211 (Energy Supply, Distribution, or Use)*

MARAD has determined that this rulemaking will not significantly affect energy supply, distribution, or use. Therefore, no Statement of Energy Effects is required.

*Executive Order 13045 (Protection of Children)*

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks, requires agencies issuing “economically significant” rules that involve an environmental health or safety risk that may disproportionately affect children, to include an evaluation of the regulation’s environmental health and safety effects on children. As discussed previously, this rulemaking is not economically significant, and will cause no environmental or health risk that disproportionately affects children.

*Executive Order 12988 (Civil Justice Reform)*

This action meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

*Executive Order 12630 (Taking of Private Property)*

This rulemaking will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

*International Trade Impact Assessment*

This rulemaking is not expected to contain standards-related activities that create unnecessary obstacles to the foreign commerce of the United States.

### *Privacy Impact Assessment*

Section 522(a)(5) of the Transportation, Treasury, Independent Agencies, and General Government Appropriations Act, 2005 (Pub. L. 108–447, div. H, 118 Stat. 2809 at 3268) requires the Department of Transportation and certain other Federal agencies to conduct a privacy impact assessment of each proposed rule that will affect the privacy of individuals. Claims submitted under this rule will be treated the same as all legal claims received by MARAD. The processing and treatment of any claim within the scope of this rulemaking by MARAD shall comply with all legal, regulatory and policy requirements regarding privacy.

### *Unfunded Mandates Reform Act of 1995*

The Unfunded Mandates Reform Act of 1995 requires agencies to evaluate whether an Agency action would result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$141.3 million or more (as adjusted for inflation) in any 1 year, and if so, to take steps to minimize these unfunded mandates. This rulemaking will not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It will not result in costs of \$141.3 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objectives of the rule.

### *Regulation Identifier Number (RIN)*

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

## *Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 et seq.), Federal agencies must obtain approval from OMB for each collection of information they conduct, sponsor, or require through regulations. This rulemaking updates the regulations with two new exceptions to the restrictions on the eligibility of vessels over 165 feet in registered length to be documented with fishery endorsements, removes certain exemptions relating to specific vessels, and adds restrictions on large vessels by limiting those vessels from participating in the non-AFA trawl catcher processor subsector. This rulemaking contains no new or amended information collection or recordkeeping requirements that have been approved or require approval by the Office of Management and Budget.

### **Comments on the Proposed Rule**

In response to the agency's Federal Register document seeking public comment on its proposed revisions to 46 CFR part 356 published on June 10, 2014 (79 FR 33160), a total of three separate comment submissions were made by or on behalf of the following entities: Groundfish Forum, O'Hara Corporation, and the At-Sea Processors Association. The agency responds below to all comments.

Two commenters suggested that 46 CFR 356.47(b) be revised to clarify that the restrictions imposed by Section 307 apply to all the vessels listed in paragraphs (1) through (20) of section 208(e) of the American Fisheries Act (non-Amendment 80 AFA catcher-processor vessels) regardless of which large vessel exemption the vessel falls under in 46 U.S.C. 12113(d)(2) in order to preserve the statutory distinction between the AFA and Amendment 80 sectors. To accomplish this, one of the commenters recommended adopting the technical advice provided by the National Oceanic and Atmospheric Administration (NOAA) to Congress during



its consideration of Section 307. We acknowledge that Section 307 of the CGMTA is intended to codify and maintain the separation of the AFA sector from the non-AFA trawler sector as evidenced by statements of Senators Cantwell, Murkowski, and Begich in the Congressional Record and the text of the statute. 158 Cong. Rec. S7972 (Dec. 12, 2012). We note, however, that NOAA's technical advice that would have edited Section 307 to accomplish this separation was not ultimately adopted by Congress because the non-AFA trawler sector restrictions on AFA sector vessels were only inserted in the regional fishery management council provision and the replacement vessel exemptions to the large vessel prohibition of 46 U.S.C. 12113(d) (sections 12113(d)(2)(B) and (C), respectively). In light of the fact that the statutory amendments of Section 307 are sufficiently complete as to be self-executing, MARAD finds that the best way to implement the restrictions on AFA sector vessels consistent with the statutory language of Section 307 and Congressional intent is to insert the restrictions in our regulations as they appear in the statute. Nevertheless, to assure that the sector separation of section 307 is clear, MARAD is revising its Large Vessel Certificate (see below) to require all AFA sector vessels subject to the large vessel restrictions of 46 U.S.C. 12113(d) to certify that they are neither eligible nor participating in the non-AFA trawler sector. In order to be eligible for a fishery endorsement, all large fishing industry vessels subject to 46 U.S.C. 12113(d) must submit a Large Vessel Certificate under MARAD regulation 46 CFR 356.47.

Another commenter noted that the revisions to 46 CFR 356.47(b) omitted subsection (2) providing that a large vessel is still eligible for a fishery endorsement if it is not placed under foreign registry after October 1998. This omission was inadvertent. Neither the CGMTA nor the CGAA repealed this provision. The final rule will contain subsection (2).

(Authority: 46 U.S.C. 12113(d))

## **List of Subjects in 46 CFR Part 356**

Citizenship and naturalization, Fishing vessels, Mortgages, Penalties, Reporting and recordkeeping requirements, Vessels.

For the reasons set out in the preamble, the Maritime Administration amends 46 CFR Part 356 as follows:

### **PART 356-REQUIREMENTS FOR VESSELS OF 100 FEET OR GREATER IN REGISTERED LENGTH TO OBTAIN A FISHERY ENDORSEMENT TO THE VESSEL'S DOCUMENTATION**

1. The authority citation for part 356 continues to read as follows:

AUTHORITY: 46 U.S.C. 12102; 46 U.S.C. 12151; 46 U.S.C. 31322; Pub. L. 105-277, division C, title II, subtitle I, section 203 (46 U.S.C. 12102 note), section 210(e), and section 213(g), 112 Stat. 2681; Pub. L. 107-20, section 2202, 115 Stat. 168-170; Pub. L. 114-74; 49 CFR 1.93.

2. Amend § 356.47 by revising paragraphs (a) through (c) to read as follows:

#### **§356.47 Special requirements for large vessels.**

(a) Unless exempted in paragraph (b), (c) or (d) of this section, a vessel is not eligible for a fishery endorsement under 46 U.S.C. 12113 if:

(1) It is greater than 165 feet in registered length;

(2) It is more than 750 gross registered tons (as measured pursuant to 46 U.S.C. Chapter 145) or 1900 gross registered tons (as measured pursuant to 46 U.S.C. Chapter 143); or

(3) It possesses a main propulsion engine or engines rated to produce a total of more than 3,000 shaft horsepower; such limitation shall not include auxiliary engines for hydraulic power, electrical generation, bow or stern thrusters, or similar purposes.

(b) A vessel that meets one or more of the conditions in paragraph (a) of this section may still be eligible for a fishery endorsement if:

(1)(i) A certificate of documentation was issued for the vessel and endorsed with a fishery endorsement that was effective on September 25, 1997; and

(ii) The vessel is not placed under foreign registry after October 1998;

(2) The vessel –

(i) Is either a rebuilt vessel or replacement vessel under section 208(g) of the American Fisheries Act (title II of division C of Public Law 105-277; 112 Stat. 2681-627);

(ii) Is eligible for a fishery endorsement under this section; and

(iii) In the case of a vessel listed in paragraphs (1) through (20) of section 208(e) of the American Fisheries Act (title II of division C of Public Law 105-277; 112 Stat. 2681-625 et seq.) is neither participating in nor eligible to participate in the non-AFA trawl catcher processor subsector (as that term is defined under section 219(a)(7) of the Department of Commerce and Related Agencies Appropriations Act, 2005 (Public Law 108-447; 118 Stat. 2887)); or

(3) The vessel is a fish tender vessel that is not engaged in harvesting or processing of fish.

(c) A vessel that is prohibited from receiving a fishery endorsement under paragraph (a) of this section will be eligible if the owner of such vessel demonstrates to MARAD that:

(1) The regional fishery management council of jurisdiction established under section 302(a)(1) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)(1)) has recommended after October 21, 1998, and the Secretary of Commerce has approved, conservation and management measures in accordance with the American Fisheries Act (Public Law 105–277, div. C, title II) (16 U.S.C. 1851 note) to allow the vessel to be used in fisheries under the council’s authority; and

(2) In the case of a vessel listed in paragraphs (1) through (20) of section 208(e) of the American Fisheries Act (title II of division C of Public Law 105-277; 112 Stat. 2681-625 et seq.), the vessel is neither participating in nor eligible to participate in the non-AFA trawl catcher processor subsector (as that term is defined under section 219(a)(7) of the Department of Commerce and Related Agencies Appropriations Act, 2005 (Public Law 108-447; 118 Stat. 2887)).

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#### **§ 356.51 [Amended]**

3. Amend § 356.51 by removing paragraphs (a) through (d) and redesignating paragraphs (e) through (f) as new paragraphs (a) and (b), respectively.

**Dated: November 28, 2017**

**By Order of the Maritime Administrator.**

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**T. Mitchell Hudson, Jr.**

**Secretary, Maritime Administration**

[FR Doc. 2017-25896 Filed: 11/30/2017 8:45 am; Publication Date: 12/1/2017]